



Plenary sitting

B9-0232/2022

3.5.2022

MOTION FOR A RESOLUTION

with request for inclusion in the agenda for a debate on cases of breaches of human rights, democracy and the rule of law

pursuant to Rule 144 of the Rules of Procedure

on **the case of Osman Kavala in Turkey**
(2022/2656(RSP))

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on behalf of the S&D Group

**European Parliament resolution on the case of Osman Kavala in Turkey
(2022/2656(RSP))**

The European Parliament,

- having regard to its previous resolutions on Turkey, in particular those of 19 May 2021 on the 2019-2020 Commission Reports on Turkey and of 21 January 2021 on the human rights situation in Turkey, in particular the case of Selahattin Demirtaş and other prisoners of conscience,
- having regard to the Commission communication of 19 October 2021 on EU Enlargement Policy (COM(2021)0644) and to the accompanying Turkey 2021 Report (SWD(2019)0290),
- having regard to the Council conclusions of 26 June 2018, 18 June 2019 and 14 December 2021 on the enlargement and stabilisation and association process, to the European Council's conclusions of 24 June 2021 and 1 October 2020, and to all previous relevant Council and European Council conclusions,
- having regard to the Statement by the High Representative on the conviction of Mr. Osman Kavala of 26 April 2022,
- having regard to the Statement by the Spokesperson following European Court of Human Rights' verdict on Mr Kavala, still detained in Turkey of 11 December 2019, to the Statement by the Spokesperson on a new detention order against Mr Kavala of 19 February 2020, to the EU statement on the re-arrest of Mr Kavala in Turkey of 26 February 2020, to the Statement by the Spokesperson on the extension of Mr Kavala's detention of 21 December 2020, and to the Statement by the Spokesperson on the case of Osman Kavala of 9 October 2021,
- having regard to the founding values of the European Union, which are the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, as enshrined in Article 2 TEU, and which apply equally to all EU candidate countries,
- having regard to the European Convention on Human Rights, which was adopted by the Council of Europe on 4 November 1950 and to which Turkey is a state party,
- having regard to the judgment of the European Court of Human Rights (ECtHR) in the case of Kavala v. Turkey (28749/18) of 10 December 2019,
- having regard to the relevant resolutions by the Committee of Ministers of the Council of Europe, including the interim resolution of 2 December 2021 on the execution of the judgment of the European Court of Human Rights in Kavala against Turkey, the interim resolution of 2 February 2022 on the execution of the judgment of the European Court of Human Rights in Kavala against Turkey,

- having regard to the reaction from the Council of Europe Secretary General to the Osman Kavala ruling in Turkey of 18 February 2019 and to the reaction of the Council of Europe Commissioner for Human Rights to the re-arrest of Osman Kavala of 19 February 2020,
 - having regard to Article 46 of the European Convention on Human Rights (ECHR), which states that the contracting parties undertake to abide by the final judgments of the European Court of Human Rights (ECtHR) in any case to which they are parties, and, therefore, to the obligation of Turkey to implement all judgements of the ECtHR,
 - having regard to the International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly on 19 December 1966 and to which Turkey is a state party, and in particular to Article 9 thereof on arbitrary arrest and detention,
 - having regard to Turkey's Law no. 7188 on Amending the Code of Criminal Procedure and Certain Laws of 17 October 2019, which went into effect on 24 October 2019,
 - having regard to the decision of the Istanbul 13th Heavy Penal Court regarding the Gezi Trial of 25 April 2022,
 - having regard to the decision of the Istanbul 30th Heavy Penal Court regarding the Gezi Trial of 18 February 2020,
 - having regard to the Istanbul Public Prosecutor's ex-officio release order for Mr Kavala per Article 209 of the Turkish Penal Code of 11 October 2019,
 - having regard to the Universal Declaration of Human Rights,
 - having regard to Rule 144 of its Rules of Procedure,
- A. whereas on 25 April 2022 Istanbul's 13th High Penal Court, presided by judge Mesut Özdemir, sentenced Mr Osman Kavala, a prominent human rights defender, to life in prison without parole, finding him guilty of "attempting to overthrow the government", while he was acquitted of "espionage"; whereas seven other defendants (Mücella Yapıcı, Can Atalay, Tayfun Kahraman, Ali Hakan Altınay, Yiğit Ali Ekmekçi, Çiğdem Mater Utku and Mine Özerden) were sentenced to 18 years in prison and their immediate arrest ordered by the court; whereas these allegations are politically motivated and have never been substantiated, neither in the ruling of 25 April 2022;
- B. whereas in 18 February 2020 the Istanbul 30th Heavy Penal Court acquitted Mr Kavala in relation the Gezi trial, and ordered his immediate release, citing the complete absence of concrete and material evidence which would determine that the charged crimes had been committed; whereas the Court also acquitted Mücella Yapıcı, Can Atalay, Tayfun Kahraman, Ali Hakan Altınay, Yiğit Aksakoğlu, Yiğit Ali Ekmekçi, Çiğdem Mater Utku and Mine Özerden, among whom Yiğit Aksakoğlu

had been released at an earlier date after after spending seven months in custody, including in solitary confinement;

- C. whereas on 22 January 2021 the 3rd Penal Chamber of the İstanbul Regional Court of Justice, the court of appeals, reversed the rulings of acquittal of Mr Kavala and 8 other defendants;
- D. whereas referring to the charges brought against the defendants in the indictment, the court justified its reversal by indicating that the pieces of evidence such as the defendants' social media posts, press statements and slogans chanted were not considered in handing down the previous ruling;
- E. whereas Mr Kavala was the only defendant still in custody by the time of his acquittal, having been held in pre-trial detention since 18 October 2017; whereas the competent magistrates' courts rejected each of the defendant's 10 applications for provisional release;
- F. whereas 7 defendants, including journalist Can Dunder and actor Mehmet Ali Alabora, had remained abroad for the duration of the trial; whereas the Court had separated their cases from those of the 9 in-country defendants and issued an arrest warrant against them; whereas the Court, in its decision of 18 February 2020, lifted the arrest warrant;
- G. whereas, within hours after his acquittal and before his release order could be implemented, Mr Kavala was re-arrested and transferred to police custody at the behest of the Istanbul Chief Public Prosecutor İrfan Fidan under Article 309 of the Turkish Penal Code on charges of attempting to undermine the constitutional order in the context of an ongoing parallel investigation regarding his supposed involvement in the coup attempt of 15 July 2016;
- H. whereas, on 19 February 2020, President Recep Tayyip Erdogan of Turkey condemned the judgment of Istanbul's 30th Heavy Penal Court, claiming Mr Kavala's acquittal to be part of a scheme hatched by individuals "who wish to spark uprising in certain countries and stir up trouble" and referring to these individuals as "a wilful enemy of the state and its people"; whereas President Erdogan's statements, among other high-level officials, actively undermine the independence of the Turkish judiciary;
- I. whereas the Prosecutor's Office also appealed against the verdicts of acquittal and Public Prosecutor Edip Şahiner demanded that the acquittals be reversed;
- J. whereas, following Mr Erdogan's statements, the Council of Judges and Prosecutors (HSK), which is responsible for judicial appointments and administration, opened an investigation into the three judges who acquitted Mr Kavala and his 8 co-defendants, citing 'flaws' in their judgment; whereas Amendment 17 to Article 159 of the Turkish Constitution, approved through the contested constitutional referendum of 16 April 2017, enhanced the power of the President over the composition of the Council of Judges and Prosecutors; whereas the disciplinary proceedings against these judges appear to be a direct interference in their decision-making power and can have a

chilling effect on the independence of all members of the judiciary;

- K. whereas, on 11 October 2019, the Istanbul Chief Public Prosecutor's Office issued an ex-officio order to release Mr Kavala in the scope of the ongoing investigation into his alleged involvement in the July 15, 2016 coup attempt on the charge of attempting to undermine the constitutional order (Article 309) on the grounds that "arrest was not a reasonable measure"; whereas, while the investigation on that charge was launched concurrently with the investigation regarding the Gezi Trial, no indictment had been prepared as of the time of his re-arrest on the same charge on 19 February 2020;
- L. whereas, in accordance with Turkey's Law no. 7188 on Amending the Code of Criminal Procedure and Certain Laws, a suspect facing charges of terrorism or crimes against the state cannot be held in pre-trial detention before the completion of an indictment for a period exceeding two years; whereas the file of investigation against Mr Kavala under Article 309 of the Turkish Penal Code was opened on 25 February 2018; whereas the failure of the Turkish authorities to release Mr Kavala on 25 February 2020 therefore constituted a violation of its domestic penal code;
- M. whereas the failure of the Istanbul Chief Public Prosecutor's Office to conduct a new interrogation following Mr Kavala's re-arrest demonstrated that no new evidence was found to substantiate the charges brought under Article 309 of the Turkish Penal Code since its ex-officio release order of 11 October 2019; whereas this lack of new evidence constituted the absence of credible ground for Mr Kavala's re-arrest on the same charges;
- N. whereas the whole process against Mr Kavala has been a succession of judicial manoeuvres and irregularities, marred by political interference, and with the main aim of extending Mr Kavala's detention; whereas, among other irrational decisions, the Gezi case was merged with the so called *çArşı* trial -whose defendants had also seen their acquittals overturned over the course of 2021- during the period of August 2021 and February 2022: whereas the judge Mahmut Başbuğ presiding over the Istanbul 30th Heavy Penal Court who requested this merging was the same who signed it off at the 13th Heavy Penal Court after being temporarily appointed to it; whereas later on the 13th Heavy Penal Court decided in February 2022 to split again the cases for no apparent reason; whereas one of the judges of the panel of the 13th Heavy Penal Court ruling the sentence of the case on 25 April 2022, Murat Bircan, applied to be a candidate to the Grand National Assembly for the ruling party in 2018;
- O. whereas, on 10 December 2019, the European Court of Human Rights (ECtHR) ruled Mr. Kavala's detention to be in violation of Article 5(1) of the European Convention on Human Rights (ECHR) due to a lack of reasonable suspicion, of Article 5(4) of the Convention due to a lack of a speedy judicial review by the Constitutional Court, and of Article 18 of the Convention, in conjunction with Article 5(1) of the Convention, due to the politically motivated nature of his detention measure, the purpose of which was to exert a dissuasive effect on human rights defenders;
- P. whereas the judgment of the ECtHR pertains to both the charges leveraged against Mr Kavala under Article 312 of the Turkish Penal Code in relation to his alleged

involvement in the Gezi Park protests and to the charges leveraged against him under Article 309 of the Turkish Penal Code in relation to his alleged involvement in the foiled coup attempt of 15 July 2016;

- Q. whereas the judgement of the ECtHR held that the Turkish authorities were to secure Mr Kavala's immediate release; whereas Turkey has continued to act in violation of the European Convention on Human Rights by failing to lift Mr Kavala's detention;
- R. whereas through interim-resolutions in December 2021 and in February 2022 Committee of Ministers of the Council of Europe launched infringement proceedings against Turkey for refusing to implement the legally-binding judgement of the European Court of Human Rights;
- S. whereas Turkey, as an EU candidate country, is bound to upholding the highest standards of democracy, including respect for human rights, the rule of law, fundamental freedoms and the universal right to a fair trial;
1. Condemns, in the strongest terms possible, the recent ruling by the Istanbul 13th Heavy Penal Court imposing an aggravated life sentence on Osman Kavala after more than four and a half years of unjust, unlawful and illegitimate detention; believes that he has been convicted on unjustified charges, for the purpose of silencing him as a human rights defender and deterring critical voices in Turkey;
 2. Calls on Turkey to fully implement all judgements of the European Court of Human Rights in line with Article 46 of the ECHR, an unconditional obligation deriving from Turkey's membership of the Council of Europe and enshrined in Turkey's constitution;
 3. Reiterates its call on the Turkish authorities to act in conformity with their international and domestic obligations and to abide by the final judgment of the European Court of Human Rights in this case and immediate release Osman Kavala and restore his rights in full, as well as to ensure the immediate release of the other seven defendants in the case;
 4. Condemns and deplores the continued efforts and attempts to extend Mr Kavala's imprisonment, despite the absence of any credible or tangible evidence, through a series of complex evasive judicial tactics including the merging and disjoining of case files and constant irregularities in utter disregard of fair trial standards and at the service of a political purpose;
 5. Is appalled by the fact that the aggravated life sentence imposed by the court is based on Article 312 of the Turkish Criminal Code (attempting to overthrow the Government by force and violence), in flagrant disregard of the fact that the ECtHR had already and specifically dismissed this accusation in its rulings;

6. Takes note of the recurrent decisions by the Committee of Ministers of the Council of Europe urging Mr Kavala's release, which culminated in the historical launching of infringement proceedings by the Committee of Ministers of the Council of Europe against Turkey through interim-resolutions in December 2021 and February 2022 over Turkey's refusal to abide by the ECtHR's final judgement; notes that the infringement proceedings highlight the seriousness of Turkey's violations of its obligations as a member of the CoE and an EU candidate country;
7. Condemns the Turkish authorities' degrading and inhumane treatment of Mr Kavala, which violates his rights under the European Convention on Human Rights, the International Covenant on Civil and Political Right (ICCPR) and Turkish domestic law, as well as his human dignity under Article 17 of the Constitution of the Republic of Turkey; calls on Turkey to refrain from further intimidation measures against him and to guarantee his human rights as enshrined in the Turkish Constitution and European and international law;
8. Expresses deep concern over incidents suggesting governmental interference in the judicial affairs related to the re-arrest of Mr Kavala; insists that the Turkish authorities take all possible measures to guarantee the independence of the judiciary in line with Article 6 of the ECHR;
9. Denounces the decision of the Council of Judges and Prosecutors to launch an investigation against the three judges who acquitted Mr Kavala categorically and unequivocally; calls for immediate measures on the part of the Turkish authorities to ensure the right to due process for each of the investigated judges, that their cases are reviewed by an independent judicial court in accordance with international standards, and that redress, including compensation for the material and moral damage caused, is ensured; calls on the Turkish Government and Judiciary to ensure that judges have the unhampered freedom to decide cases impartially, in line with international judiciary standards and Turkey's commitments under the ECHR and in its capacity as a candidate state of the European Union;
10. Is appalled to see how, on the other hand, the former Istanbul Deputy Public Prosecutor Hasan Yılmaz, responsible for the second indictment against Kavala, was subsequently appointed Deputy Minister of Justice and an ex officio member of the Council of Judges and Prosecutors;
11. Expresses deep concern over incidents suggesting clear governmental interference in the judicial affairs related to the prosecution of Mr Kavala; insists that the Turkish authorities take all possible measures to revert the current dire state of the judiciary and restore its independence in line with Article 6 of the ECHR, ensuring the impartiality of all Turkish judiciary bodies and protecting them from political interference; expresses concern that the composition of the Council of Judges and Prosecutors following the adoption of the constitutional amendments of 2017 does not offer adequate safeguards to guarantee the independence of the judiciary;

12. Urges the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the Commission and Member States to continue to bring up the case of Mr Kavala, and all other cases of human rights defenders, lawyers, journalists, politicians and academics, among others, subjected to arbitrary detention with their Turkish interlocutors, and to provide diplomatic and political support for them, including trial observation and case monitoring; calls for a delegation of the European Parliament to attend the proceedings of the trial of Mr Kavala, if continued; calls on the Commission and the Member States to increase the use of emergency grants for human rights defenders and to ensure the full implementation of the EU Guidelines on Human Rights Defenders;
13. Notes that with the decision to openly challenge defy the binding rulings of the ECtHR in relation to the case of Osman Kavala and others, the current Turkish Government has deliberately demolished any aspirations of reopening the EU accession process in the present situation;
14. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the Turkish President, Turkish Government and its Parliament and requests that this resolution be translated into Turkish.